

COUNTY OF YORK

MEMORANDUM

DATE: November 24, 2004 (BOS Mtg. 12/7/04)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application for exemption from real and personal property taxation pursuant to Code of Virginia §58.1-3651 – Windy Point Recreation Association, Inc.

The Windy Point Recreation Association, Inc. (The Association) owns real property located in York County at 315 Vine Drive in York County. The land and improvements thereon is currently assessed for real estate taxation for a total of \$219,100. The Association was assessed for real estate taxes in the amount of \$1,791.14 for calendar year 2004. They have not reported ownership of any personal property on which local taxes could be assessed.

The Association, following the procedure outlined in Code of Virginia §58.1-3651, is requesting exemption from real and personal property taxation. Such exemptions may be granted by the Board of Supervisors pursuant to Code of Virginia §58.1-3651 for the “real or personal property taxes, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.” Further, “no exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.”

Code of Virginia §58.1-3651 (copy attached) further sets out the criteria, which must be considered by the Board when adopting any such ordinance. I have repeated each of those criteria below, numbered consistently as set out in the state statute, and below each criteria, in italics, have set out the responsive information provided by The Association. That information is set out in a letter dated October 25, 2004 from Ms. Diane Osborne, Windy Point Recreation Association President (copy attached).

- 1) Whether the organization is exempt from taxation pursuant to §501(c) of the Internal Revenue Code of 1954.

We are a 501(c)(7) organization. We are incorporated in the Commonwealth of Virginia.

- 2) Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to such organization, for use on such property.

We do not have a Virginia State Liquor License. Alcoholic beverages may be consumed at adult only parties by our members and their adult guests.

- 3) Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders.

None of the Windy Point Recreation Association Board Officers or members of the board are salaried or paid for services of any kind. Supply costs for the facility purchased by members are reimbursed. Salaried employees include the pool manager, swim coach, and lifeguards.

- 4) Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services.

No funds are accrued from local, state or federal grants. We do accept donations and contributions; however, these are not tax deductible to the donors.

- 5) Whether the organization provides services for the common good of the public.

We provide activities for adults and youth in York County. The properties include an Olympic size and baby pool, two outer buildings, swing-set, volleyball court, horseshoes, and a basketball area – all services are duplicated in part by the county. These amenities reduce the County's burden while enhancing community property values.

- 6) Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office.

Windy Point Recreation Association offers water safety classes to their members. We support a competitive swim team in the Virginia Peninsula Swimming Association.

- 7) The revenue impact to the locality and its taxpayers of exempting the property.

Windy Point Recreation Association also allows organizations such as Cotillion meetings, and the Boy Scouts of America to use the facility for their water tests. The facility is also available for pool parties and for an assortment of other celebrations.

- 8) Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such resolution.

Windy Point Recreation Association does not support meetings for political related activities.

Other relevant factors:

- a. Windy Point Recreation Association bylaws provide that they accept as members any York County residents who wish to be a member on a yearly basis and remain in good financial standing.*
- b. Quoting for Code of Virginia 58.1-3284.1 which established tax exemption for automatic membership corporations (see homeowners associations):*

“All real property used for open or common place pursuant to this section shall be construed to having no value in itself for assessment purposes. Its only value lies in the value that is attached to the residential or commercial property which has a right by easement, covenant, deed or other interest.”

Windy Point Recreation Association’s real value to York County is that it provides services which enhance the properties that surround Windy Point Recreation Association as well as the Greater York County.

Unlike automatic membership corporations, Windy Point Recreation Association must continue to provide a valuable service to its community in order to remain financially viable or cease to be in service.

In addition, Code of Virginia §58.1-3651 requires that the ordinance state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. The classifications available are religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground. The classification that The Association seems to most closely fit is “public park and playground.”

In the past, requests for exemption from real and personal property taxation required the Board to pass a resolution making a recommendation to the General Assembly who would in turn consider the request, and, if granted, would codify the exemption. Changes to the Code of Virginia have now passed the granting authority to the local governing body. The Code of Virginia includes the names of the organizations, together with the dates and section numbers of the adopted legislation for which the General Assembly granted real and personal property tax exemption prior to the change to the Code of Virginia. The list includes over 1,000 organizations. I have not included copies of those pages from the state code, but they may be found in any copy of the Virginia State Code as §58.1-3650.1 through 58.1-3650.1001.

Furthermore, section 58.1-3651 does not define what is meant by “public park and playground purposes” (the proposed tax exemption category), whether for example a

recreational facility must be open without restriction to the all members of the public in order to qualify for a tax exemption under that heading. However, a perusal of the names of the organizations previously granted exemptions by the General Assembly prior to January 1, 2003, before authority to grant such exemptions was passed to local governments, suggests that other organizations similar to The Association have received tax exemptions in the past, although the list of names does not reveal anything about the other organizations' membership restrictions. See, for example, exemptions granted to "Property of Holmes Run Acres Recreation Association, Inc." (2001), and to "Property of Walden Glen Swim and Racquet Club, Inc." (2001). Note that a property tax exemption was granted in 2002 to Running Man Recreation Association, Inc., of York County, even though the information provided to the County at the time of the application indicated that membership was restricted to residents of Running Man. It appears, then, that having a restricted membership policy did not prevent the General Assembly in years past from granting a property tax exemptions under the heading of "public park and playground purposes." In addition, the Board of Supervisors granted similar requests from the Marlbank Recreation Association on July 13, 2004 and from the Edgehill Association, Inc. on September 21, 2004.

Proposed Ordinance No. 04-30 has been prepared for the Board's consideration. If adopted, this ordinance will grant exemption from real and personal property taxation to Windy Point Recreation Association, Inc. on the basis of use for public park and playground.

Please let me know if you have any questions.

White/3737

Attachments

- Code of Virginia §58.1-3651
- Letter from Diane Osborne, President, Windy Point Recreation Association, Inc. dated October 25, 2004 (with attachments)
- Proposed Ordinance No. 004-30